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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/780,603	02/12/2001	Kirt E. Whiteside	WHS.P0018A	8458

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EXAMINER



RESTIFO, JEFFREY J

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 02/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

 Office Action Summary	Application No. 09/780,603	Applicant(s) WHITESIDE, KIRT E.	
	Examiner Jeffrey J. Restifo	Art Unit 3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 16-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-13 and 16-19 is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2/12/01 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgments

1. Acknowledgment is made of the amendment filed 12/8/03. This amendment has been entered.

Response to Arguments

2. In view of the appeal brief filed on 12/8/03, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2). The examiner regrets the delay in citation in art. An action on the merits follows.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the contact width of the wheel body being about 50 to about 75% must be shown or the feature(s) canceled

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from the claim(s). No new matter should be entered. The wheel of figure 5 does not appear to illustrate this feature of about 50 to about 75% of the wheel width making contact with surface.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the phrase "normal use" is indefinite because it is unclear what would be considered "abnormal use", further, the deformation of the wheel when in use would be dependent upon the weight of a user. The examiner suggests the removal of this last limitation of claim 1. Note, the specification appears to lack clarification of "normal use". No new matter will be entered.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miles et al. (US 5,892,062 A) and in further view of Gruber (US 3,604,756 A)

Miles et al. discloses a creeper 1 comprising opposed side rails 4-7, a pad 18-20 between said side rails, and a plurality of casters 8-11 attached to a planar bottom surface of said side rails and rotatable about vertical axis located within the profile of the side rails, as shown in figures 1-6. Miles et al. does not disclose the caster wheel as having a radial surface in which about 50 to about 75% of the width of the caster wheel contacts the support surface as broadly recited. Gruber does disclose a wheel body 10 having a radial surface 22 with hub 12 including axle bore defined by bearing 16, an inner rim 14, an outer rim 18, radial supports 24, wherein said radial surface makes contact with a work surface on about 50 to about 75% of the wheel width, as shown in figures 1-3. It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided the creeper of Miles et al. with the wheels of Gruber in order to allow the creeper to turn with less force exerted by a user due to less friction between the wheel and support surface.

8. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miles et al. and Gruber, as applied to claim 3 above, and further in view of Doyle et al. (US 4,707,880 A).

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Neither Miles et al. nor Gruber disclose the wheel assembly as being selected from the recited materials. Doyle et al. does disclose a caster wheel 28 composed of polyurethane, as recited in column 3, lines 28-29. It would have been obvious to one having ordinary skill in the art at the time of the invention to have composed the caster wheel of the creeper of Miles et al. and Gruber out of polyurethane, as taught by Doyle et al., in order to give the wheel increased durability and decreased weight.

9. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miles et al., Gruber, and Doyle et al., as applied to claim 5 above, and further in view of Block (US 4,034,434 A).

None of Miles et al., Gruber, or Doyle et al. disclose the wheel as having a hardness from about 65 to about 85 Shore durometer type D. Block does disclose a wheel 66 having a hardness of 65/75 Shore D Durometer, as recited in column 3, line 65. It would have been obvious to one having ordinary skill in the art at the time of the invention was to have designed the wheel of the combination of Miles et al. as modified by Gruber, and Doyle et al., with a hardness of 65/75 Shore D Durometer, as taught by Block, in order to prevent wear on the wheel.

Allowable Subject Matter

10. Claims 7-13 and 16-19 are allowed.

11. The following is an examiner's statement of reasons for allowance: In claim 7, the recitation of the tapering cross section of the side rails in combination with the rest of

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the recited structure and in light of an appeal decision of similar case 09/523,469 defines over the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey J. Restifo whose telephone number is (703) 305-0579. The examiner can normally be reached on M-F (10:00-6:00), alternate Friday off.

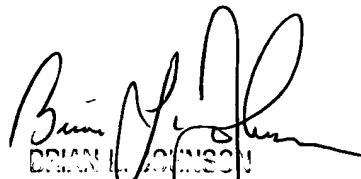
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Johnson can be reached on (703) 308-0885. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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JJR
February 23, 2004

Jeffrey J. Restifo
Examiner
Art Unit 3618


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SUPERVISORY PATENT EXAMINER
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2/23/04